

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

JOHN WALTER KIRCHEN  
TX-1326155-R

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DOCKETED COMPLAINT NO.  
08-024

### AGREED FINAL ORDER

On this the 11 day of December, 2008, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of John Walter Kirchen (Respondent).

In order to conclude this matter John Walter Kirchen neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

### **FINDINGS OF FACT**

1. Respondent John Walter Kirchen is a Texas state certified residential real estate appraiser, holds certification number TX-1326155-R, and has been certified by the Board during all times material to the above-noted complaint case.
2. On or about July 13, 2007, Respondent appraised real property located at 11 Garden Lane, Arlington, Tarrant County, Texas, 76015 ("the property").
3. On or about October 8, 2007, the Complainant, Steve Lanman, a representative for Washington Mutual Bank, filed a complaint with the Board. The complaint alleged that the appraisal report contained incorrect information and lacked certain necessary information.
4. On or about October 17, 2007 the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent's response to the complaint was received.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:



a) Respondent failed to comply with the record keeping provisions of USPAP's Ethics Rule;

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- b) Respondent failed to correctly identify and report the owner of record;
  - c) Respondent failed to report clearly and accurately any extraordinary assumption, hypothetical condition, or limiting condition that directly affects the analysis, opinions, and conclusions;
  - d) Respondent failed to identify and report the site description adequately;
  - e) Respondent failed to identify, analyze and report the effect on use and value of existing land use regulations by not identifying, analyzing and reporting the specific zoning classification and deed restrictions applicable to the property;
  - f) Respondent failed to provide a brief summary of his rationale for his determination of the property's highest and best use, nor did he address whether the property was over improved for the neighborhood in which it was located;
  - g) Respondent failed to adequately collect, verify, analyze and reconcile the cost of new improvements, accrued depreciations, and site value. Respondent generally did not employ recognized methods or techniques in his cost approach and did not provide support for his conclusions;
  - h) Respondent failed to adequately collect, verify, analyze and reconcile accrued depreciations;
  - i) Respondent failed to collect, verify analyze, and reconcile comparable sales data adequately;
  - j) Respondent failed to analyze all agreements of sale, option or listings of the property and all sales of the subject property within 3 years prior to the effective date of his appraisal; and,
  - k) Respondent committed substantial errors of omission or commission as noted above which resulted in a misleading appraisal report on the property.
6. Respondent omitted material facts and made material misrepresentations in his appraisal report on the property as detailed above.

## **CONCLUSIONS OF LAW**

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.



2. Respondent violated the following provisions of 507.20 as promulgated by the  
ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule (record keeping  
provisions); USPAP Standards Rules: 1-2(e)(ii) & 2-2(b)(iv); 1-2(f) or 1-2(g) & 2-1(c); 1-

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2(e)(i) & 2-2(b)(iii); 1-3(a) & 2-2(b)(viii); 1-3(b) & 2-2(b)(ix); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2(b)(viii); 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-5(a) & 2-2(b)(viii); 1-5(b) & 2-2(b)(viii); 1-1(a); 1-1(b); 1-1(c); and, 2-1(a).

3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations and omitting material facts.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent shall:

- a. Have his certification revoked for 12 months with this revocation being fully probated under the following conditions:
  - i. During the entire probated, twelve month revocation period Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board. The log shall be submitted every three months and shall detail all real estate appraisal activities he has conducted during the previous three month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and fully accurate. Upon request from the Board, Respondent shall provide copies of his appraisals reports and work files for any appraisal assignments he performs during the course of his period of probation within the twenty days of notice of any such request; and
  - ii. Fully and timely comply with all of the provisions of this Agreed Final Order.
- b. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- c. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
- d. Attend and complete a minimum, 15 classroom-hour course in Sales Comparison Approach Course;
- e. Pay a \$1,000.00 administrative penalty; and,
- f. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be completed within **TWENTY DAYS** of the date of this Agreed Final Order.



**ALL CLASSES** required by this Agreed Final Order must be classes approved by the Board and must be completed within **NINE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements

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of this Order shall be delivered to the Board on or before the end of the nine-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for certification.

Failure to timely comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent as provided for by TEX. OCC. CODE § 1103.518, including but not limited to possible revocation of the above-noted probation.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

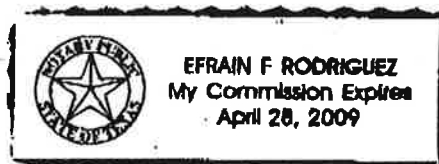
Signed this 11 day of December 2008.

  
JOHN WALTER KIRCHEN

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 11 day of DEC., 2008, by JOHN WALTER KIRCHEN, to certify which, witness my hand and official seal.

  
Notary Public Signature

EFRAIN F RODRIGUEZ  
Notary Public's Printed Name






Signed by the Commissioner this 12<sup>th</sup> day of December, 2008.

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Timothy K. Irvine, Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 12<sup>th</sup> day of December, 2008.

  
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Clinton P. Sayers, Chairperson  
Texas Appraiser Licensing and Certification Board



